

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JAMES PHILIP DOUGLAS,

Petitioner,

v.

ROBERT S. MASKO,

Respondent.

No. C09-5439 RJB/KLS

ORDER DENYING MOTION FOR  
DEFAULT

Before the court is Petitioner's motion for default. Dkt. 26. Having carefully reviewed the motion and balance of the record, the court **ORDERS** as follows:

Petitioner requests that an order of default be entered against Respondent and that his habeas petition be granted because Respondent failed to file an answer to his petition in the time granted by the court. Dkt. 26, p. 1.

Pursuant to the court's Order of December 2, 2009, Respondent was ordered to file an Answer to Petitioner's habeas petition within forty-five days from the date of the Order. Dkt. 13. Respondent did not do so. On April 23, 2010, the court directed Respondent to file and serve his answer on or before May 7, 2010. On May 5, 2010, Respondent filed a motion for extension of time until May 10, 2010, to obtain the necessary documents and information to complete a

1 proper response. Dkts. 22 and 23. Under separate order, the court is granting that motion. On  
2 May 10, 2010, Respondent filed his answer and relevant state court record. Dkt. 24.

3 Therefore, Respondent's Answer and submission of relevant state court record were filed  
4 with this court in a timely manner. Moreover, even if the Respondent's Answer had been  
5 untimely, Mr. Douglas is not entitled to the remedy he seeks. While Rule 55 provides for default  
6 judgment in most civil actions, the Ninth Circuit has expressly declared that a habeas corpus  
7 petitioner is not entitled to default judgment. *Gordon v. Duran*, 895 F.2d 610 (9th Cir. 1990).  
8 The State's failure to respond to the claims in a habeas corpus petition does not entitle the  
9 petitioner to a default judgment. *Id.* at 612. The habeas petitioner still bears the burden of  
10 showing that he or she is in custody in violation of the Constitution. Absent such a showing, the  
11 petitioner is not entitled to relief. *Id.*

12  
13 Accordingly, it is **ORDERED**:

14 (1) Petitioner's motion for default (Dkt. 26) is **DENIED**.  
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16 DATED this 26th day of May, 2010.

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19 Karen L. Strombom  
20 United States Magistrate Judge  
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